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# Families, Relationships and Societies

## Rape within heterosexual intimate relationships in Iran: Legal frameworks, culture and structural violence --Manuscript Draft--

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<b>Abstract:</b>	Rape and sexual assault are widespread but significantly underreported worldwide. This is more so in countries where the legal system and the cultural context provide impunity for the perpetrators of sexual violence, and which sometimes blame victims for provoking the assault. Secondary victimisation of rape and sexual assault victims through the responses of individuals and institutions are prevalent globally. However, this silence might be enforced further by the patriarchal legal system and long established traditional cultures. This paper aims to theorise rape within the Iranian context employing the concepts of cultural and structural violence from a feminist perspective. Such conceptualisation will facilitate a demonstration of the interplay between victims, perpetrators, the culture, and the State.
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## **Introduction:**

This study is intended to theorise rape within the Iranian context in order to offer a more comprehensive understanding of how rape and sexual violence are conceptualised and understood. Relatedly, the article examines the complex interplay between victims, perpetrators, the culture and the State. In order to do so, the paper starts with a discussion of the gender ideology of the Iranian State. This is because, as with other countries, rape in Iran is linked to women's status, and the broader manner in which femininity and masculinity are understood within society. Subsequently, the paper explores the limited statistics available on rape in Iran. The lack of official data in this respect reflects the fact that violence against women is not understood as an issue of gender inequality by the Iranian Government and the protection of women from violence is not a government priority. Furthermore, problematic attitudes towards victims of rape globally mean that women who allege sexual assault are often regarded as culpable, so it is not unsurprising that so few women report rape in Iran. This underreporting may be heightened in some religious societies in which genders inequality is sanctioned. However, there is evidence suggesting that sometimes the notions of justice, compassion and liberation have been employed by various faiths to oppose violence against women (Ware, et al., 2004). After laying the foundations, the paper engages critically with the definition of rape within the Iranian context, before embarking on theorisation of rape by drawing on Galtung's (1990) concepts of direct, cultural and structural violence from a feminist perspective (Aghtaie, 2016). The author uses the concepts of virginity, honour, and the centrality of sex within the contract of marriage to demonstrate the manner in which the absence of gender inequality and the presence of male domination within the private and public sphere discourages women from reporting sexual violence, and in so doing normalises, even condones, rape within marriage. The main focus of the paper is on rape within intimate relationships. This is because the State refuses to acknowledge that rape and sexual assault can occur within marriage.

## **Iran's Gender Ideology**

The victory of the February 1979 Revolution in Iran resulted in the emergence of an Islamic State in which Sharia law was declared the law of the land. Currently, the State is founded on the doctrine of *velayat-e faqih* (rule of the Islamic jurist). In order for the government to adhere to the framework of Islamic law, a powerful body called the Guardian Council has to approve all the bills passed by the parliament. The Council can veto any bills that it considers

inconsistent with the constitution and Islamic law. Soon after the Revolution, some of the more liberal laws and policies were abolished due to their contradictory nature with the Sharia; new policies were introduced and gender inequalities became further embedded within the new regime. This is not to say that women enjoyed equal rights during the previous government. Many of the post-revolutionary 'new' policies had their roots in long established cultural traditions (Moghadam, 1999) which understood men and women in specific, discreet ways, drawing on biological assumptions to bolster such constructions of difference.

The gender ideology of the State, after the Revolution, promoted the idea that women are prone to anti-Islamic (primarily Western) influences and can easily slip from being 'honourable' to being dishonourable while men are understood as susceptible to sexual temptation. The ideology of protecting men's inherent vulnerability to women's bodies provided the justification for policies and laws such as compulsory veiling and gender segregation. A moral police force was created to implement the new policies. Their role is to patrol the streets to ensure that everyone, especially young women, adheres to the codes of modesty. Women, particularly young women who are '*bad hijab*', i.e. not veiled properly, and who are not adhering to strict sexual and moral codes, are perceived as the source of potential moral decay that needs to be cautioned and disciplined. Early marriage is encouraged to avoid illegitimate outlets for sexual gratification and therefore immorality. According to Moghadam, '*the themes of gender difference and the need for female domesticity were linked to [...] the danger inherent in the female nature*' (Moghadam, 2003: 194). Therefore, men are constructed as eminently susceptible to female lures and the mere presence of women is said to undermine men's better judgment, their sanity and their rationality. The biological construction of men as being incapable of controlling their sexual desires (in most global contexts) feeds into cultural assumptions that women's sexuality is in need of control in order to purify society. Since that issues such as the virginity of unmarried women and restrictive codes of behaviour are important factors in maintaining familial honour and collective honour, those who fail to adhere to such arrangements may experience violence and, in extreme cases, honour killing (Kewley, 2000). Within this context women are perceived as the holders of familial and societal honour; this puts women in a vulnerable position in cases of sexual assault and rape because the focus will turn on women and the ways in which their behaviour or presentation is interpreted as unleashing men's supposedly uncontrollable desires.

It is important to note that the third generation- those born after the revolution—are not what the State expected and are constantly criticized for not adhering to the State's ideal genders (Aghtaie, 2016; Tremayne, 2014). According to Haeri (2009:22): '*...Iranian women have excelled in every educational, scientific and artistic field that has been open to them... In the words of Ashraf Borujerdi, 'women have become a presence that can no longer be ignored'.* Also access to the internet has provided space for the discussion of gender equality, sexual rights, sexual pleasure and challenging the State's gender ideology (Yaghoobi, 2012). However, the women's and men's resistance to gender discriminatory law and policies have been continuously repressed by the Iranian authorities since beginning of the Islamic Revolution (Amnesty International, 2016).

### **Data on rape in Iran and cultural perceptions**

No official statistics have been published on the number of reported rape and sexual assault crimes, or related subsequent conviction rates. There is also a scarcity of empirical or theoretical research concerned with sexual violence and rape in this context. Apart from two studies (Shahali, et al., 2016; Aghtaie, 2011) there are no published academic articles or books solely on rape and sexual violence in Iran. By using a historical court case, the latter paper seeks to analyse the ways in which the Iranian Penal Code responds to rape. It illustrates the way in which the combination of the society's perception of women and various shortcomings in Iranian legislation sometimes makes it difficult for the victims of rape to report the crime to the police, while also identifying the difficulties that the victims may face in proving the crime. Shahali et al's., (2016: 1) qualitative research explores the barriers to health care provision for victims of sexual assault, by collecting the views of 23 health care providers and 10 victims of sexual violence through unstructured interviews and observations. They argue that due to extreme cultural stigma, sexual assault in Iran is hugely underreported, finding a '*lack of mutual understanding between health care providers and victims of sexual violence in relation to the expectations and priorities of victims'.* There are few legal texts targeted at professionals and legal experts such as lawyers and judges. It is important to note that in these books the words 'rapists' or 'perpetrators' are not used, instead they are called '*zani*' (adulterer) or 'accused' (Aghtaie, 2011).

The only statistics available to the public take the form of sporadic information in newspapers reporting interviews with police officers, lawyers or government officials. For example,

Iran's police chief Morteza Ahmadi-Moghadam announced that there had been 900 officially recorded cases of rape in Iran in the year 2011. In an earlier report (2007), ISNA (Iranian Student News Agency), in an interview with a police official, reported that sexual attacks on women had become one of the top priorities of the police force. In the same interview, the police officer stated that 40% of rapes in Iran are the outcomes of hidden friendships between young people and false marriage promises made by young men, who often engage in, or enforce sexual intimacy based on these false promises. He expressed his opinion that it is parents' responsibility to protect their daughters by raising their awareness. In the same interview, he argued that if parents provide enough love, care and attention, such harmful incidents could be avoided. There have been other instances in which officials repeatedly blame women for rape crime. It is a recurring suggestion in official circles that the number of rapes would be reduced if women alter their behaviour, especially the way they present themselves in the public domain (Author, 2011). An Iranian lawyer, Mehrangiz Kar (2015), stated that, *"In Iran's courts there are many factors that influence a judge's decision in a rape case [...] The courts would claim that such incidents were consensual because there should be no reason for a woman to be in the residence of a man who is a stranger"*. Such blaming attitudes reduce the number of women who come forward to report sexual crime. As mentioned previously, blaming women for rape incidences is not exclusive to Iran (Westmarland & Gangoli, 2011). In most cases women feel ashamed and might be held partially accountable by their family, peers, and community. This results in many victims not reporting the crime. Sometimes the Iranian State turns a blind eye to this issue and does its best not to publicly talk about rape. This tendency has recently been illustrated in a case where an 11 year old girl was gang raped (Al-monitor, 2015). Although, some officials from Rouhani's presidential administration voiced their views about the government's lack of willingness to pursue the matter, no action has yet been taken. For example, Iran's vice president for women and family affairs, Shahindokht Molavardi, criticised the hardliners, accusing them *'of having double standards for opposing the presence of women at the recent volleyball world championship games in Tehran, which they claim would violate the "purity" of women, while at the same time keeping silent about this crime'* (Al-monitor, 2015). In another incidence a group of women at a private party were gang raped at knife point. According to a press report, a group of men entered the walled garden house, locked some of the men in one of the rooms and tied the rest to trees and raped the female guests. It was reported that one of the women who was heavily pregnant was taken to the next door property and raped (BBC, 2011). The incidence provoked a huge protest by the locals in the

town of Khomeinishahar outside of the courthouse who were angry about the officials' silence about the case as well as being worried about the safety of the local women. The anger was heightened when the Imam of Khomeinishahr, Musa Salemi, announced in his Friday sermon that 'those who were raped were not praiseworthy'. Similar comments were made by the town's police commander, Revolutionary Guards Hossein Yardoosti: *'I believe the raped women's families are to blame, because if they had proper clothing and if the sound of their music was not so loud, the rapist would not have imagined it as a depraved get-together'* (BBC, 2011).

One of the reasons for the fact that there are no official records and statistics is that according to Islamic teaching, in order to protect public morality, sexual acts, whether voluntary or by force, should not be part of public discourse. Further, the victims of rape and their families are unlikely to report crimes of rape due to feeling ashamed as well as fear of losing their honour. Therefore, the combination of self-censorship and State censorship have closed the space for any public discourse and debate on the issue (Aghtaie, 2011).

### **Definition of rape in Iran**

Aghtaie (2011: 125) notes that 'there are no actual words in the Iranian dictionary which means rape. The combinations of two words *tajovoz jensi* or *taroj jensi*, which mean sexual attack or sexual harassment, are used as synonyms for 'rape'. In many cases only *taroj* and *azaar* are used; these words mean bothering and harassment, in so doing, they avoid the more serious connotations of the word 'sexual'. This is a clear example of how language is used to minimise the sexual violence experienced by Iranian women.

Within the legal system, and in courts of justice, rapes (outside marriage) are dealt with under article 82 of the Iranian Penal Code which is punishable by *hadd* (a punishment whose characteristics have been described by the Sharia law). Rape, which is referred to as *zena-e ba onf va ekrah* (adultery with force and duress) falls under the category of *zena* (sex outside marriage). Penile penetration can be either into the vagina or anus and there is no law prosecuting forced oral sex. The word *onf* means force or violence, requiring that resistance must be demonstrated by the victim. *Ekrah* could include situations in which the victim has not displayed any resistance due to being scared or threatened; in these cases, the intention to

object is evident, but is suppressed through fear. Therefore, threats to kill or hurt a woman are included in the definition of coercion. However, there have been cases in which the victims have been raped while unconscious and the perpetrator has not been punished (See Aghtaie, 2011).

According to article 82 of the Penal Code of Iran, regardless of the age or marital status of the offender, the punishment for *zena*, sex outside marriage, in certain cases is the death penalty.

This applies to *zena-e ba onf va ekrah* or rape. Situating rape as a subsection of *zena* means that women have to be co-defendants as well as complainants due to the fact that sex outside marriage is illegal. It is also very likely to be presumed by courts that any sexual incidents were consensual because, for example, there should be no reason for a woman to be in the residence of a man who is a stranger. This not only leaves women in a vulnerable position, it also might discourage them from reporting the rape crime (for detailed exploration concerning rape outside intimate relationships see Aghtaie, 2011).

### **Proving rape and conviction**

Most countries experience prosecution and sentencing problems that reduce the number of convictions for crimes, including sexual violence and rape (Westmarland, 2011). This is even more so in Iran due to laws and policies that sanction discrimination by gender. There are four ways to prove *zena* (including *zena-e ba onf va ekrah* being rape). Firstly by confession, secondly by the testimony of four 'just' men or three just men and two 'just' women (This is when the designated punishment is either stoning or flogging). However, there is no clear definition in the legal texts about who can be identified as a 'just' man or a 'just' woman. This is based on the personal views of the judge. Thirdly, testimony of two 'just' men and four 'just' women is required if the designated punishment is flogging but not stoning. The testimony of women alone or in conjunction with the testimony of only one 'just' man alone cannot be used to prove *zena* and in fact it can be regarded as a false accusation which is punishable by 80 lashes (Aghtaie, 2011). There are, then, many factors that hinder the prosecution of rape cases. Firstly, there is a clear over-reliance on providing witnesses to prove rape. This problem has been identified by Kar (2000) a prominent Iranian lawyer. Rape normally happens behind closed doors. She suggests that an over-reliance on providing witnesses stops women coming forward to file a case. Further to this, counting the witness testimony of a man as equal to two women is a gross injustice and constitutes serious gender discrimination.



### **Towards a theoretical understanding:**

Here I draw on Galtung's (1990) concepts of direct, structural and cultural violence from a feminist perspective (Aghtaie, 2016) to provide a better understanding of rape within the context of Iran. This will provide a robust framework within which sexual violence can be understood within intimate relationships, while also identifying the interplay between the victims, perpetrators, the culture, and the State.

I have argued above that in Iran rape is often sanctioned implicitly and explicitly in through cultural and legal institutions, and policies that provide impunity for perpetrators, normalising violence against women. Galtung states: '*Cultural violence makes direct and structural violence look, even feel, right- or at least not wrong...cultural violence highlights the way in which the act of direct violence and the fact of structural violence are legitimized and thus rendered acceptable in society*' (1990: 291). Although Galtung does not specifically talk about structural or cultural violence in relation to gender, he sporadically applies his theory to gender related issues. For example, he briefly refers to patriarchy as one type of structural violence but fails to acknowledge that patriarchy can present itself in different forms (Confortini, 2006; Author, 2015a). Galtung argues that there are various aspects to cultural violence: religion and ideology; language and art; empirical and formal science. He postulates that these aspects are used to portray violence as an acceptable and sometimes normal act: '*One way cultural violence works is by changing the moral colour of an act from red/wrong to green/right or at least yellow/acceptable*' (Galtung, 1990: 292). He calls direct, structural and cultural violence '*super-types*', and figures each of these as one of the three corners of a *violence triangle* (1990: 294). In the Iranian context men's sexual violence is sometimes normalized using difference discourses such as biological essentialism, culture and religion. The normalization of rape and sexual violence, within the context of marriage, is further condoned by the State legal system which explicitly allows men to have unlimited nonconsensual access to their wives' bodies; hence, there is a culturally and legally sanctioned failure to protect women's rights to refuse sex within marriage. As will be demonstrated below, these various tools are culturally specific and used differently and to varying extents in Iran.

It is important to note that whilst it is commonly assumed that the limited gender rights accorded to Muslim women in Iran means that sexual violence is very different to sexual

violence in the UK, I argue that despite very clear differences between these two contexts, there are similarities as well. For example, normalisation of men's entitlement over women's bodies in certain circumstances is evident in both contexts. In the UK women are sometimes blamed by the society for the crime of rape for consuming alcohol prior to rape or by dressing provocatively (Westmarland & Gangoli, 2011). It was evident in a research conducted by Amnesty International in England and Wales that '*34% of interviewees believed the victim was partially or totally responsible if she behaved in a flirtatious manner*' (Westmarland, 2011: 91). As will be discussed below, in Iran, women not might only be blamed by the society, but also by the jurists (Aghtaie, 2011). Hence, it is commonly agreed that a top down approach, that is legal reform, is not, on its own, a sufficient means of addressing problems faced in rape prosecution (HM Government, 2007, 2009; Temkin and Krahe, 2008); rather, there needs to be a shift in attitudes throughout the society by tackling rape myths (Westmarland, 2011). However, research has demonstrated that a top down approach will have some impact on people's attitudes over a period of time. For example, this has been evident in research on children and corporal punishment that over time legislative reforms do have an impact on society's attitudes towards children's physical punishment (Durrant, 2003). It is important to note that adopting a top down approach is not an easy task in Iran. With Kar (2000), Haeri (2009) believes that the Islamic State of Iran has tried to justify the legitimization of discriminatory laws which perpetuate gender inequality by basing its arguments on three presumably irreversible beliefs: the nature/nurture theory that argues women and men are biologically different and that this would entail different rights and obligations; religion, which is the sacred route for human society; and finally Islamic Sharia law. Such reasoning renders the mentioned laws sacred and therefore, if one were to object to them due to their gender discriminatory nature, she/he might be accused of blasphemy.

### **Virginity and honour**

The prohibition of sex outside marriage has posed grave problems for women who have been raped by their boyfriends in filing a complaint: undoubtedly they would be blamed for having a boyfriend in the first place. Therefore, the victims of sexual attacks and rapes experience multiple oppressions. Not only are they the victims of male assault, they might also be blamed for provoking it. In addition, they could be punished through the legal system for the crime of adultery, receiving 100 lashes if unmarried, or being sentenced to death by stoning if married. These punishments are in conjunction with the possible emotional and physical violence to which they might be subjected by their male or female kin. Although punishment

such as stoning applies to both parties, it has been documented that the number of women who have been stoned in Iran is far greater than of men (Kusha, 2002). Within this context, I would argue that holding women responsible for men's sexual aggression as a form of cultural violence normalises the patriarchal legal system (structural violence) and direct violence. In this way, '*cultural violence makes direct and structural violence look, even feel, right or at least not wrong*' (Galtung, 1990: 291). This is not to assert that all women in Iran are submissive victims of circumstance, or that they blame themselves for the wrongdoing of others, or fail to recognize men's violent behaviours. It is evident from existing research that some Iranian women discuss rape by boyfriends, and that they clearly perceive such acts as gender violence. In so doing, they challenge the normalization of the perception held by the society at large that blames girls for men's violent acts (Aghtaie, 2016).

Another issue that disadvantages victims of rape is the notion of honour. In many Iranian families, especially those living in smaller cities, the honour of a woman and her family is strongly linked to the preservation of her virginity prior to marriage. El Saadawi (2007: 38) calls it: '*the very fine membrane called honour*'. Mernissi (1996: 34) states: '*the concepts of honour and virginity locate the prestige of a man between the legs of a woman...*'.

*Aberoo*/reputation within Iranian culture coerces women to stay silent if they are raped. The upholding of *aberoo* falls mainly to women and in many situations it increases male power over women. Moreover, men's control of women is strengthened by the fact that the State condones violence in the name of honour. For example, Article 61 of the Iranian Islamic Qasas states: '*If someone kills another in defence of his honour...provided the force used is not excessive and it is not by government agents, then it will not be considered a crime*' (Cited in Afshar, 1998: 173). Hence, in Iran men exert more power over women partly due to sexist ideology and the lack of gender equality. Within this context the notion of *aberoo* (cultural violence), controlling male behaviour (cultural violence) and institutionalised sexism (structural violence: patriarchal laws) work hand in hand to create injustice which can result in the normalisation of direct violence (e.g. rape, sexual assault, honour killing). Since the State promotes its gender ideology under the paradigm of Islam, it is difficult to overtly challenge the institutionalised sexism and this further normalises the double standards.

It seems that preserving virginity till marriage and associating it with the honour of the family have been normalised through different structural and cultural arrangements in Iranian society. This is demonstrated in Farahani's (2008) research into the narratives of diasporic sexuality of several Iranian women in Sweden in which women described in detail how

women in Iran are socialized to conform to the cultural expectations of the society, and the manner in which they become self-disciplined in such a way that they adhere to set moral values. However, these moral values are gendered; girls and women are not only accountable for upholding and preserving their own virginity and upholding the family's honour, but are also accountable for boys' loss of virginity which can bring shame to the family of the girl/woman. The notions of shame and stigma are not exclusive to Muslim cultures, and are in fact common elements experienced by victims of rape within other communities (Chantler and Gangoli, 2011), for example, adult survivors of child sexual abuse (Feiring et al, 2002) or women who have experienced different forms of sexual violence (Kelly, 1988).

It is important to note that enforcing virginity prior to marriage is not exclusive to Islam. Farahani (2008) has documented the fact that the imposition of premarital virginity was already a dominant demand amongst Zoroastrians in Iran prior to the establishment of Islam. In addition, Farahani claims that currently various religious sectors in Iran, such as Armenians, Jews and Zoroastrians and those individuals who call themselves secular to varying degrees, also insist on girls' premarital virginity, highlighting varying levels of strictness and adherence to these requirements. Therefore, holding Islam solely responsible for advocating and regulating women's sexuality is inappropriate. Patriarchy, and the control of women's sexuality within the patriarchal context, transcends religion (Chantler & Gangoli, 2011).

Based on the above discussion, it is fair to say that if men's honour and society's collective honour are closely associated with women's pureness prior to marriage and with men's sexual possession of women after marriage, then a woman's virginity could become a source of male domination and hence violence. The level of sexual violence and rape, its impact and the reporting of violent incidents are also affected further, if the legal system perceives the virginity of an unmarried woman as a signifier of her worth and chastity. For example, having a law such as *arsholbekareh* (compensation for losing one's virginity outside wedlock in rape cases) which has to be paid by the convicted rapist commodifies virginity and institutionalises the privileging of virginity. Hence, in rape cases in which the perpetrators are punished by death, the penalty is not because they have raped a woman but because they have molested another man's property.

Additionally, practices such as virginity tests prior to marriage to provide certified documents for the future husbands verifying the woman's virginity or the illegal practice of

hymenorrhaphy by gynaecologists who reconstruct the hymen for women who have lost their virginity prior to marriage are all examples of how a patriarchal society controls women's sexuality and hence normalises sexual violence. They also demonstrate the difficulty of reporting a rape crime because of the privileging of virginity, concepts of honour, the stigma attached to rape and the legal system which is constructed to believing men's account of the rape, and to disbelieving the women's account. These issues have become more prevalent in the previous two decades, during which more young people have come to experience sexual intercourse prior to marriage (Mahdavi, 2008; Afary, 2009). Some have regarded this as a 'sexual revolution' (Mahdavi, 2008), resisting patriarchy by not passively submitting to the social and legal moral codes prescribed by the State and the traditional culture. However, despite some changes in sexual behaviour, especially among middle/upper class families, women sometimes find themselves in an arena in which they are not afforded any legal protection if they experience rape and sexual molestation. Moruzzi and Sadeghi (2006) call this 'Iranian sexual liberation on masculine terms':

*Rejecting the traditional Islamic conception of patriarchal authority (and its corollary obligation of the man to respect the honour of woman), but without an indigenous modern conception of feminine power (i.e., feminism), these young women find themselves free to experience the insidious double standard of their own and their society's masculinist orientation. This is the recognizably modern version of gender inequality: the right of the woman to be held accountable for her own relative lack of power (Moruzzi & Sadeghi, 2006: 28).*

Within this context, women may defy cultural oppression on an individual basis but this defiance does not translate into any rights or protection in the wider sphere of sexual relationships due to the lack of gender equality. The structurally supported gender bias in the form of institutionalised sexism and the traditional attitudes towards women's sexuality convey the message that only those women who have complied with the gender ideology of the State would have men's respect and protection; this is another factor that contributes to the normalisation of violence against those who fail to comply. It is worth noting, here, that the notion of sexual chastity is not necessarily equated with patriarchal oppression or structural bias. For example, Mahmood (2005: 15) explores the concepts of veiling and chastity, not specifically in relation to rape and sexual violence but in the context of Egyptian women's mosque movement. She suggests that the act of shyness and veiling should not be

looked at from a feminist lens where women's body and sexuality is regulated by male authority. Instead, these acts should be interpreted as a manner of self-disciplining of body and mind by Egyptian women themselves and not through the force of male authority. She argues that for these women veiling and shyness are *first and foremost a command from God* and hence craving for freedom and liberty should not be assumed as something which is universal for all women across the world. Mahmood insists that these concepts need to be contextualised and that we should not be fixated on one singular meaning for agency. Therefore, what may appear to be a sign of passiveness and docility might actually be a form of agency in itself. Gourgouris (2008) critiques Mahmood's approach arguing instead that perceiving a source as sacred by a political power or a certain society does not translate itself to being *sacred by divine decree*. Gourgouris's concern is not about the sacredness or non-sacredness of a particular text, rather, he argues that where politics stem from religious commands, this removes any possibility of describing its nature as sacred.

### **Marital Rape:**

Within the Iranian legal system rape within marriage or intimate relationships is not recognised. In fact rape within marriage is sanctioned within the legal system.

Mir-Hosseini (2000) and Tizro (2012) have critically explored the principles of Islamic marriage as a legal institution which is based on a contract between the two parties, the woman and the man. They explain that the best way to understand any contract is to find out each side's rights and obligations. As soon as the marriage sermon is read the wife is placed under the husband's authority, control and protection. As a result men legally become responsible to provide maintenance, *nafaghe*, as soon as they get married. This is regardless of the wife's income or whether the husband has the means to pay it or not. Providing maintenance includes food, lodging and clothing. As Mir-Hosseini puts it: *'This right is absolute: it can neither be waived by agreement nor delegated'* (Mir-Hosseini, 2000: 46). In return, to qualify for such rights, the woman must be obedient. Therefore, if the wife rebels against the husband's will, *nushuz*, it means that she loses her right to maintenance. This does not mean that if the wife is financially independent, she does not have to obey her husband. The full submission to the husband's will is in order as soon as the marriage sermon is read. This full submission and obedience to the husband, *tamkin*, has two dimensions: *tamkin khaas*, not objecting to sexual contact when desired by the husband and *tamkin aam*, not

leaving the household without his permission. Mir-Hosseini states: '*the rules that qualify and disqualify a woman for [nafaghe] revolve around the twin themes of sexual access and compensation*' (2000: 47). She believes that although there are different schools of thought within Islam, they '*all relate women's rights to maintenance to the sexual act*' (2000: 209). Manifestations of *nushuz* consist of any types of behaviour or actions that could be harmful to the constitution and purpose of marriage, which are satisfying sexual desires and reproduction.

The term *tamkin khaas*, which means full sexual submission, legally endows men with the right to have sex with their wives on demand. Further to this, culturally, women's sexuality exists only within the framework of marriage. Therefore, marriage is perceived as a contract which accommodates sexual relations between the two genders. However, it is a one way system in which men are perceived as the active agents who must have access to sex anytime they desire, and women are passive agents who have to be available at all times, if needed. Women have to renounce their sexuality and are expected to have full self-control over any sexual instinct when not needed, and to be continually available and pleasing at their husband's will (Tizro, 2012; Aghtaie, 2015; Aghtaie, 2016). The paradoxicality of expectations of women as sexless before marriage and a sexual being as soon as they marry has been documented in previous research (SadeghiArdestani, 1988; Shahidian, 2002; Tizro, 2012; Aghtaie, 2015; Aghtaie, 2016). Shahidian articulates this well:

*...Women are supposed to have two contradictory and mutually exclusive sexual selves: one, uninhibited and pleasing; the other demure, practically non-existent. The sexual and asexual woman lives in one, but when the sexual is present, namely, when in bed with her husband, the asexual partner departs. Conversely women should show no sign of sexuality before marriage or in public (Shahidian, 2002: 180).*

Some prominent religious scholars such as Motahari (1979) have placed their argument in the context of natural order, where women and men are biologically different and this therefore, entails dissimilar duties and obligations. He declares that within the contract of marriage, a man has only one right and that is the right to enjoy sex with his wife. Women are therefore not seen as sexual beings in their own right with their own desires for sexual pleasure, or even as equal partners in a sexual relationship. The founder of the Iranian Revolution Khomeini

stated that it is women's duty to accommodate their husband's sexual desire whether they feel like it or not. He states that "*A woman must surrender to her husband for any pleasure*" (Cited in Shahidian, 2002: 179). There is also a Koranic verse which has been interpreted by those with orthodox views that men have unlimited entitlement to a woman's body: '*women are your field: go, then, into your fields as you please*' (Koran, 2: 223). Such belief positions women as passive recipients of men's sexual desires, who, as such, should be available for intimacy when required. The perceived passivity of women's sexuality is not confined to certain cultures or communities. Mackinnon (1989) notes that "*women are socialized to passivity and receptivity*", arguing that this has an impact on blurring the meaning of force and choice. When sex is violent the loss of control is explicit. However, the absence of a physically violent act does not ensure a sense of control for the woman. As Mackinnon puts it, "*sexual intercourse may be deeply unwanted, the woman would have never initiated it, yet no force may be present*" (1989: 177). However, within the Iranian context, the coercive nature of male domination is normalised further by using religion/interpretation of religion as a powerful legitimiser. Within the domain of *tamkin khaas*, the absence of coercion does not mean that women are exercising free agency. Women might feel that they have to provide a sexual service for their husbands as part of their religious duties or cultural norms regardless of their own feelings. This demonstrates how using culture or religious discourse could normalise structural or direct violence, thus preventing some women from challenging or reporting their husband's violent acts. This is clearly depicted in qualitative research (Aghtaie, 2016) that examined the attitudes of Iranian students in Iran to gender based violence. One participant's response to the notion of *tamkin khaas* and whether a woman can say no to her husband for sex is particularly telling:

*No they should never say 'no'. There is a hadith [prophet's saying] about this: if the wife says no to her husband, the angels will curse her till morning. Men are much more sexual than women*

However, this view was not shared by all participants in this study; some believed in women's rights to ownership of their bodies and considered that if women do not consent to sexual contact, then it is marital rape.

Najmabadi (1998) has described *tamkin khaas* in marriage as a way of suppressing women and encouraging the notion of superiority of men over women. Kar (2000) believes that articles such as 1108 of the Civil Code of Iran – outlining that women lose their rights to



maintenance for refusing to have sex with husbands – denies a women any rights in her marital bed. She declares that some judicial authorities do not condemn men's sexual perversions, but rather encourage women to be obedient and to return to their volatile marital homes.

It should be mentioned that not all male jurists agree with *tamkin khaas*. Based on empirical research, Aghtaie (2015) declares how some lawyers in Iran translate the notion of *tamkin khaas* to nothing but marital rape that encourages violence in marital relationships. Rajaei reports the view of those who believe that: '*logically no reading of religion necessarily leads to violence, but some narratives may pave the way for it*' (Rajaei, 2007: 206). Therefore, it depends how those narratives are being interpreted. Muslim feminists and women's rights advocates have critically engaged with the formerly taboo issue of *tamkin khaas*. In an article titled '*obedience*', Shukri and Labriz (1992) interrogate the concept of *tamkin khaas* questioning the legitimacy of such laws within the domain of Islamic law and jurisprudence. They challenge the obligatory notion of such a contract and bring attention to the resultant injustice if women's feelings at the time of intercourse are not taken into account as one of the important criteria within the framework of marriage. Mir-Hosseini (1996) argues that such laws are male constructs, and encourages a feminist reading of the Koran. However, those who follow traditional values bring in evidence from Islamic texts such as: '*in the fear of nushuz (disobedience) and addam-i-tamkin, a husband has the right to punish his wife*' (Badieh, 82, cited in Kar, 2000:65). Or: '*if a man hit his wife, he should be punished unless the wife does not tamkin (in both senses aam and khaas)*' (Badieh: 82, cited in Kar, 2000: 65). It is important to note that objectifying women, and the regulation of women's sexuality, transcend the Muslim context. It has been evident that patriarchy might present itself in different guises depending on time and space. For example, Hester (1992) uses the example of the early modern witch-hunt in England to demonstrate and theorize the continuity and persistence of male domination, at different times and in different places, by arguing that men use historically specific features to subjugate women. From this it is evident that male domination presents itself in different manifestations depending on the specific context and time. Mackinnon (1989) echoes the same view, stating that male dominance exists in different forms across different cultures; elements that are construed as markers of women's sexual difference from men becomes the focal point of their inferiority. This means that whatever characterizes women's sexuality, also positions them as inferior. Within this framework, women in different locations can be perceived and treated in ways that men want to perceive

and treat them. These prevalent social and cultural practices normalise and present as socially ‘right’ and ‘nature based’ activities that violate women, but which would not be considered as violent, such as rape within marriage or pornography.

### **Help seeking**

Previous research has shown that victims of rape are less likely to report rape and more likely to delay seeking support and medical care if they live in a society where traditional attitudes towards women's sexuality in which rape and sexual assault are associated with loss of honour for the victim, family and community (Kamimura et al., 2014; Lievore, 2005; Gangoli, 2011). Shahali et al., (2016) report on distinct approaches to the response to rape in various countries: in Australia, for example, the victims of rape and sexual assault are considered in terms of safety, protection, emotional needs – including not being held accountable for the crime - medical help, and practical support such as seeking legal help; in Iran, on the other hand, victims are more concerned about hymenoplasty and abortion. These concerns can be attributed to the cultural and legal moral codes which coerce women to remain virgins. Shahali et al., (2016:6) find that the absence of family support, due to issues of honour, and the fact that healthcare workers are not free of discriminatory attitudes, represent additional barriers to victims seeking support. They argue that there is a *‘need to strengthen both the capacity and resources of the current health system. This can be achieved through the work of policymakers and administrators within the health system ...’*. However, it is difficult to see a significant shift in policymakers’ willingness and efforts to offer high-quality provision of medical care, treatment and counselling, given that Iranian law is complicit in the discriminatory treatment of victims of rape and sexual assault. The starting point would be for the State to commit itself to gender equality and addressing the shortfalls in the criminal justice system, while also creating space in the media for fight against the stigma long associated with this crime, in order to facilitate a necessary shift in public attitudes.

### **Conclusion**

In this article, I have explored the various structural, cultural, religious, and legal impediments to justice faced by women experiencing rape and sexual assault in intimate relationships in Iran. I have argued that there are many shortfalls within the Iranian legal system concerning rape. For example, it is grossly unreasonable to require the provision of numerous eyewitnesses to the act of rape, because rape normally happens in the private

sphere, away from other people's presence. In addition, basing the credibility of a person's testimony on her/his gender conveys the message to the male perpetrator that he lives in a society where gender discrimination and inequality are legally sanctioned and where women are treated as second class citizens. Within this framework, women's alleged inherent emotionality and deficiency of rational judgment are normalised and portrayed as facts using religion or interpretation of religion as a tool. So religion works as a largely unquestioned coercive control mechanism which legitimizes structural and cultural violence. I am not implying that women who do not live in a non-theocratic country or under different religious ideologies such as Christianity and Judaism, are not subjugated or that women prior to the Iranian Revolution were free from gender discriminatory laws. Violence against women transcend any religion, but we cannot ignore that gender discriminatory laws that employ religious discourse act to legitimise and normalise violence.

I have argued that the full spectrum of institutionalised sexism as a form of structural violence - such as secondary victimisation of rape survivors by punishing the victims or sanctioning rape within the framework of marriage as well as normalisation of rape by upholding women responsible for the crime of rape - have posed significant obstacles to the support that victims of rape are able to receive. I have demonstrated how men's sense of entitlement to women's bodies, especially within marriage, stems from either culture, religion/misinterpretation of religion and the ways in which both work to normalise men's sexually aggressive behaviour. Then this normalisation is justified by using a biological discourse depicting men as creatures who do not have any control over their sexual desires if enticed. In addition, using religion/interpretation of religion to promote concepts such as *tamkin khaas* (cultural violence), supported by the legal system (structural violence) not only normalises marital rape (direct violence), it also makes it difficult to oppose such laws.

Not only the Iranian State coerces women to remain a virgin prior to marriage through legal codes, the cultural moral codes have become a source of women's subordination. As discussed, the notion of *aberoo*/reputation and the discourses of 'bad' and 'good' woman based on her sexual chastity imposed by society at large prevent women from reporting crimes of rape and sexual violence within and outside intimate relationships. Further to this, the cultural discourse of who is a 'bad' or 'good' woman based on her purity and the support of such discourses by the legal system focuses on women, their behaviour and actions rather than on men who perpetrate the violence. Within such a gender-biased context, women are not only accountable for upholding and preserving their own purity and virginity before

marriage but are also accountable for men's loss of control. Hence it seems that the Iranian State fails to perceive rape as violence against women, or to see it as a power issue stemming from unequal gender relations, conceiving of women as agents rather than victims. Consequently, certain fundamental beliefs about women and their sexualities might appear as 'natural' and any deviation from presumed 'natural' sexuality is penalised. Hence, there is need for radical change and the first step would be to usher in legal reform and to make sure that the new changes are implemented by the judiciary. As mentioned earlier, the State also needs to take the necessary steps to dismantle long-standing discriminatory attitudes about women's sexuality, their bodies and their place in the society.

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